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Total Number of Pages in This Submission

Application Number	09/867,174
Filing Date	05/29/2001
First Named Inventor	Robert H. Scheer
Art Unit	3625
Examiner Name	Garg, Yogesh C.
Attorney Docket Number	31083.05US2

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Firm Name	Customer No. 34018 Greenberg Traurig, LLP		
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Scheer )  
Serial No. 09/867,174 ) Examiner: Yogesh C. Garg  
Filed: May 29, 2001 ) Art Unit: 3625  
Title: Method For Selecting A )  
Fulfillment Plan For Moving )  
An Item With An Integrated )  
Supply Chain )

REPLY BRIEF

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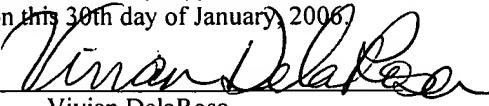
Dear Sir:

Appellants hereby submit this Reply Brief to the Examiner's Answer of January 18, 2006.

This Reply Brief is being filed in triplicate.

The Commissioner is hereby authorized to charge any fee deficiency or credit overpayment to deposit account number 50-2428 in the name of Greenberg Traurig.

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By:   
Vivian DelaRosa

## REMARKS

In response to the Examiner's Answer, it is hereby respectfully submitted that the Examiner continues to fail to present the evidence required to support a *prima facie* case of obviousness. For this reason it is respectfully submitted that the rejection of the claims must be withdrawn.

As set forth the Appellant's Appeal Brief, the claimed invention is directed to a system for use in selecting a fulfillment plan for moving an item within a supply chain distributed over a plurality of geographic locations where the ultimate destination for the item, i.e., the one of the plurality of geographic locations the item will be ultimately moved to, is not known until *after* the system performs the various steps set forth in the claims.

By way of example, consider a supply chain that has geographic locations of Detroit, Chicago, and St. Louis. In keeping with the express language of the claims, the system will first function to construct a plurality of alternative fulfillment plans for moving an item from a sourcing point to each of Detroit, Chicago, and St. Louis. In particular, the system will construct alternative fulfillment plans for moving the item using various different parcel carriers and/or various different modes of transportation considering each of Detroit, Chicago, and St. Louis as a *possible* destination for the item. Thus, while *possible* destinations for the item are known and considered when the plurality of alternative fulfillment plans are constructed, what is not known at this time is where the item will ultimately be positioned, e.g., whether it be Detroit, Chicago, or St. Louis. Before it can be determined where the item will ultimately be positioned, e.g., whether it be Detroit, Chicago, or St. Louis, the system must perform the further steps expressly set forth in the claims. Namely, the system must evaluate each of the previously constructed plurality of alternative fulfillment plans, i.e., those for moving the item from a sourcing point to

each of the *possible destinations*, against a predetermined criteria and select one of the constructed, alternative fulfillment plans for implementation. Accordingly, in keeping with the express language of the claims, it is only after the system evaluates each of the constructed plurality of alternative fulfillment plans and after the system then selects one of the constructed plurality of alternative fulfillment plans for implementation, can it be said with certainty where the item will be positioned, e.g., that the item is to be moved to Detroit using a selected carrier and carrier method.

From the foregoing, it is evident that, contrary to the position taken by the Examiner in Paragraph 10.6 of the Examiner's Answer, the order/sequence of the steps performed by the system **must** be considered when evaluating the patentability of the invention claimed. In this regard, the plain language of the claims sets forth a logical sequence of steps which the Examiner has clearly ignored when rendering the determination of obviousness. Specifically, similar to the facts set forth in *Loral Fairchild Corp. v. Sony Electronics Corp.* 181 F.3d 1313 (Fed. Cir. 1999), cited to by the Examiner, the claim language itself indicates that the steps have to be performed by the system in their written order because the "constructed" plurality of alternative fulfillment plans cannot be evaluated prior to their construction, one of the constructed plurality of alternative fulfillment plans cannot be selected prior to the evaluation of each of the plurality of constructed alternative plans, and the ultimate destination of the item, i.e., at which specific one of the plurality of geographic locations the item is to be positioned, cannot be known prior to the selection of the one of the constructed plurality of alternative fulfillment plans. Thus, by the Examiner's statements in Paragraphs 10.6 and 10.7 of the Examiners' Answer (where the Examiner has alluded to the fact that the sequence/order of the steps set forth in the claims and the ultimate outcome resulting from the performance of the steps in the sequence/order set forth

in the claims were not considered when determining the patentability of the invention claimed), it is evident that the Examiner has rendered a determination of obviousness by impermissibly distilling the claimed invention down to its “gist” or “thrust” while disregarding the requirement that the claims be considered “as a whole.” (See MPEP § 2141.02). Since the combination of Altendahl and Landvater cannot be said to render obvious the invention claimed when the claims are considered “as a whole,” it is respectfully submitted that the rejection of the claims must be withdrawn.

For the purpose of demonstrating that the combination of Altendahl and Landvater fails to disclose the claimed invention when the claims are considered “as a whole,” it is respectfully requested that Altendahl be first considered in view of the comments set forth above. In particular, it is once again respectfully submitted that Altendahl fails to “anticipate all of the limitations of claim 11 except the teaching that the item is to be moved to a plurality of geographic locations instead of one location” as asserted by the Examiner. It is agreed that Altendahl does fail to disclose that an item is to be moved to one of a plurality of geographic locations within a supply chain. It is, however, respectfully submitted that, by at least this omission, Altendahl also fails to disclose, teach, or suggest a system that creates and evaluates fulfillment plans considering plural geographic locations as *possible* destinations for an item as is required by the plain language of the claims.

As discussed previously in the Appellant’s Appeal Brief, Altendahl expressly describes a system in which the ultimate destination for an item, e.g., Chicago, is first predetermined *after which* the system of Altendahl functions to use various criteria to select a “route” to position a single item (or a “batch of items”) at that predetermined, ultimate destination, e.g., Chicago. Thus, while Altendahl may even suggest considering a plurality of shipments of different parcels

to different locations as asserted in Paragraph 10.1 of the Examiner’s Answer, what is being ignored by the Examiner is the simple fact that, in keeping with the express teachings of Altendahl, for each one of the plurality of parcels to be shipped a predetermined, ultimate destination for that one of the plurality of parcels, e.g., Chicago, is used to create and evaluate “routes” for shipping that one of the plurality of parcels to the one of the different locations that has been predetermined as the ultimate destination for that parcel, e.g., Chicago. Accordingly, even assuming that one of skill in the art would recognize from Landvater that businesses may have plural geographic locations to which items may be shipped, as asserted in Paragraphs 10.1 and 10.2 of the Examiner’s Answer, it is respectfully submitted that this recognition alone cannot be said to suggest modifying Altendahl to include the aspects of the claimed invention that are missing from Altendahl in the first place.

That the mere recognition by one of skill in the art that businesses may have plural geographic locations to which items may be shipped is alone insufficient to suggest modifying Altendahl to arrive at the invention claimed is evidenced by the disclosure within Landvater itself. Considering Landvater, Landvater, as acknowledged in Paragraph 10.7 of the Examiner’s Answer, discloses that, to ship items to plural geographic locations of a business, it is desirable to first determine the amount of items to ship to each of plural predetermined locations, i.e., retail stores, and then to ship the items in the determined amount, e.g., as a “batch of items,” to the predetermined locations to ensure items are positioned at the predetermined locations to meet anticipated needs for the items. (Col. 8, lines 26-47). Thus, when Landvater is considered in its entirety as required, what Landvater discloses with respect to what one of skill in the art would recognize as concerns shipping items amongst plural locations is that it is desirable to first pre-establish the ultimate destination for items and to then ship items in determined amounts to the

respective predetermined, ultimate destinations. Accordingly, while the knowledge to be gleaned from Landvater may be considered as *supplementing* the disclosure of Altendahl, i.e., Landvater describes with specificity how a “pick and pack” module of Altendahl (Col. 3, lines 62+) might operate to select items to thereby bundle items into a “resource” for shipment to a given, predetermined, ultimate destination (using a “route” to the given, predetermined, ultimate destination which would be created and selected according to the teachings of Altendahl after the creation of the “resource”), what Landvater cannot be said to do is disclose, teach, or suggest from its mere recognition that items may be required to be shipped to multiple retail stores is the desirability of *modifying* Altendahl such that the system of Altendahl would instead create and evaluate fulfillment plans considering plural geographic locations as *possible* destinations for an item as is required by the plain language of the claims.

In sum, since it has been demonstrated that the mere knowledge that a supply chain may include plural geographic locations even considering a desire to move items to those geographic locations “to save costs of operation and get price advantage” or “to replenish inventories” (as suggested in Paragraphs 10.1, 10.2 and 10.5 of the Examiner’s Answer) would do nothing more than suggest to one of skill in the art that it might be advantageous to supplement the system and method disclosed within Altendahl, e.g., to use the teachings of Landvater when implementing a “pick and pack” module as disclosed within Altendahl to first create a “resource” before determining the “best” “route” to use when shipping that “resource” to a predetermined, ultimate destination *while otherwise leaving Altendahl unchanged*, but cannot be said to suggest modifying Altendahl to arrive at the system claimed, it is respectfully submitted that the disclosures within each of Landvater and Altendahl, when considered in combination, cannot be said to present a *prima facie* case of obviousness and that the conclusion of obviousness set forth

in the rejection of the claims could only have been reached through the impermissible use of hindsight reasoning. For these reasons it is respectfully submitted that the rejection of the claims must be withdrawn.

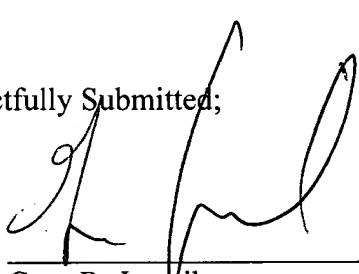
CONCLUSION

It is respectfully submitted that the application is in good and proper form for allowance. Such action of the part of the Board is respectfully requested.

Date: January 30, 2006

Respectfully Submitted;

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